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In the

Supreme Court of the United States

October Term, 1963

No. 353

BURDWELL H. SHIPE, and ARTHUR M. BELL, Administrator of the Estate of MADGE E. SHIPE, Deceased,

Appellants

vs.

THOMAS J. BRENNAN,

Appellee

JURISDICTIONAL STATEMENT

On Appeal from the Supreme Court of Pennsylvania, No. 2 May Term, 1964.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1963

No.

Burdwell H. Shipe and Arthur M. Bell, Administrator of the Estate of Madge E. Shipe, Deceased,

Appellants

vs.

Thomas Brennan,

Appellee

JURISDICTIONAL STATEMENT

On Appeal from the Supreme Court of Pennsylvania No. 2 May Term, 1964.

I. OPINIONS BELOW

The Opinion and Order of the Court of Common Pleas of York County, Pennsylvania, filed April 30, 1963, is attached hereto as Appendix "A". This decision is unreported as of August 1, 1964. The opinion of the Supreme Court of Pennsylvania affirming the order of the lower court is attached hereto as Appendix "B" and is reported in 414 Pa. 258, 199 A. 2d 467.

II. JURISDICTION

This suit is a common law action brought by Thomas J. Brennan in the Court of Common Pleas of York County, Pennsylvania, to recover damages for personal injuries alleged to have been sustained when he was struck by an automobile owned by Madge E. Shipe and Bardwell H. Shipe and operated at the time by Madge E. Shipe.

The adjudication as to which review is sought relates to the separate and distinct issue of the jurisdiction of the courts of Pennsylvania over the persons of the Appellants. The issue was initially raised as required by Pennsylvania Rules of Civil Procedure, Rules 1017, 1028 and 1032,[1] and was reviewed by the Supreme Court of

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[1] Rule 1017. Pleadings Allowed.

(a) The pleadings in an action are limited to a complaint, an answer thereto, a reply if the answer contains new matter or a counterclaim, a counter-reply if the reply of a counterclaim contains new matter, a preliminary objection, an answer thereto, and a motion for judgment on the pleadings.

(b) Preliminary objections are available to any party and are limited to

(1) a petition raising a question of jurisdiction

(2) a motion to strike off a pleading because of lack of conformity to law or rule of court or because of scandalous or impertinent matter;

(3) a motion for a more specific pleading

(4) a demurrer; and

(5) a petition raising the defense of lack of capacity to sue, pendency of a prior action, non-joinder of a necessary party or misjoinder of a cause of action.

(c) No formal joinder of issue is required.

Rule 1028. Preliminary Objections.

(a) Preliminary objections shall state specifically the grounds relied upon.

Pennsylvania pursuant to the Act of March 5, 1925, P. L. 23, 12 P.S. 672-675.[2]

(b) All preliminary objections shall be raised at one time. They may be inconsistent. Two or more preliminary objections may be raised in one pleading.

(c) A party may file an amended pleading as of course within ten (10) days after service of a copy of preliminary objections. The court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall take evidence by depositions or otherwise.

(d) If the preliminary objections are overruled, the objecting party shall have the right to plead over within such time as the court shall fix.

(e) If the filing of an amendment, an amended pleading or a new pleading is allowed or required, the court shall fix the time within which it must be filed.

Rule 1032. Waiver of Defenses. Exceptions.

A party waives all defenses and objections which he does not present either by preliminary objection, answer or reply, except

(1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and

(2) that whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter or that there has been a failure to join an indispensable party, the court shall dismiss the action.

[2] AN ACT

In relation to the procedure in certain classes of cases in which there is raised a question as to the jurisdiction of a court of first instance over the defendant or the cause of action for which suit is brought; and authorizing appeals from the preliminary decision of such questions.

Section 1. Be it enacted, &c., That wherever in any proceeding at law or in equity the question of jurisdiction over the defendant or of the cause of action for which suit

Jurisdiction

The judgment of the Pennsylvania Supreme Court was entered April 21, 1964. No rehearing was requested. Notice of appeal of Burdwell H. Shipe was filed June 8, 1964 in the Court of Common Pleas of York County, Pennsylvania. Arthur M. Bell, Administrator of the Estate of Madge E. Shipe, Deceased, was substituted on the record in the Court of Common Pleas of York County

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is brought is raised in the court of first instance, it shall be preliminarily determined by the court upon the pleadings or with depositions, as the case may require; and the decision may be appealed to the Supreme Court or the Superior Court, as in cases of final judgments.

Section 2. All such preliminary questions shall be raised by petition setting forth the facts relied upon, whereupon a rule to show cause shall be granted, and such preliminary questions disposed of by the court. Such procedure shall be deemed de bene esse only and shall not operate as a general appearance.

Section 3. The appeal here provided for must be taken and perfected within fifteen days from the date when the decision is rendered; shall be made returnable on the third Monday after it is taken; and shall be placed by the appellate court at the head of its argument list for civil cases to be heard at the earliest date consistent with its rules governing the presentation of appeals: Provided, That as to decision made prior to the approval of this act, the fifteen days limitation shall not begin to run until after the date of its approval. A failure to appeal within the time specified will be deemed a waiver of all objections to jurisdiction over the defendant personally.

Section 4. The right of appeal here conferred is not intended to cover questions of jurisdiction which go to the form of the action alone as between law and equity, such as provided for in the Act of June seven, one thousand nine hundred and seven (Pamphlet Laws, four-hundred and forty).

(Act suspended insofar as it relates to practice and procedure except insofar as it relates to appeals by Pennsylvania Rules of Civil Procedure 1550 and 1451.)

as a named party defendant and a notice of appeal was filed in his behalf in said court on Monday, July 20, 1964.

The jurisdiction of the Supreme Court to review the judgment of the Supreme Court of Pennsylvania is conferred by Title 28, U.S.C. Section 1257(2). The judgment of the Supreme Court of Pennsylvania is a final judgment within the meaning of that statute. *Local No. 438 v. Curry*, 371 U. S. 542, 83 S. Ct. 531, 9 L. Ed. 2d 514 (1963); *Mercantile National Bank v. Langdeau*, 371 U. S. 555, 83 S. Ct. 520, 9 L. Ed. 2d 523 (1963); *Cohen v. Beneficial Industrial Loan Corporation*, 337 U. S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949); *Republic Natural Gas Co. v. Oklahoma*, 334 U. S. 62, 68 S. Ct. 972, 92 L. Ed. 1212 (1948); *Forgay v. Conrad*, 6 How. 201; 12 L. Ed. 404 (1848); *Ohio River Contract Co. v. Gordon*, 244 U. S. 68, 37 S. Ct. 599, 61 L. Ed. 997 (1917).

The validity of a statute of the Commonwealth of Pennsylvania, as construed and upheld by the Supreme Court of Pennsylvania is drawn in question as being repugnant to the Constitution of the United States. *Pennoyer v. Neff*, 95 U. S. 714, 24 L. Ed. 565 (1878); *Hess v. Pawloski*, 274 U. S. 352, 47 S. Ct. 621, 71 L. Ed. 1091 (1927); *Wuchter v. Pizzutti*, 276 U. S. 13, 48 S. Ct. 259, 72 L. Ed. 446, 57 A.L.R. 1230 (1928); *International Shoe Co. v. State of Washington*, 326 U. S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945); *McGee v. International Life Insurance Co.*, 355 U. S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957).

The validity of the Act of Assembly of the Commonwealth of Pennsylvania, Act of May 14, 1929, P.L. 1721, as amended, 75 P.S. 2001-2005, sometimes popularly known as the Pennsylvania Non-Resident Motorists Act, is involved herein. The Act provides as follows:

AN ACT

Providing for the service of process in civil suits on nonresident operators, nonresident owners or nonresident persons in whose behalf a motor vehicle is being operated or motor vehicles operated within the Commonwealth of Pennsylvania; and making the operation of such a motor vehicle on the public highways of the Commonwealth of Pennsylvania the equivalent of the appointment of the Secretary of the Commonwealth of the Commonwealth of Pennsylvania as the agent of the said nonresident, upon whom civil process may be served; and providing for further notice to the defendant in any such suit.

(As amended by the Act of November 10, 1959, P.L. 1459)

Section 1. Be it enacted, &c., (a) That from and after the passage of this act, any nonresident of this Commonwealth, being the operator or owner of any motor vehicle, or being a person in whose behalf a motor vehicle is being operated whether or not such person is the operator or owner, who shall accept the privilege extended by the laws of this Commonwealth to nonresident operators and owners of operating a motor vehicle, or of having the same operated, within the Commonwealth of Pennsylvania, or any resident of this Commonwealth, being the licensed operator or owner of any motor vehicle under the laws of this Commonwealth, or being a person in whose behalf a motor vehicle is being operated whether or not such person is the operator or owner, who shall subsequently become a nonresident or shall conceal his where-

abouts, shall, by such acceptance or licensure, as the case may be, and by the operation of such motor vehicle within the Commonwealth of Pennsylvania, make and constitute the Secretary of the Commonwealth of the Commonwealth of Pennsylvania his, her or their agent for the service of process in any civil suit or proceeding instituted in the courts of the Commonwealth of Pennsylvania or in the United States District Courts of Pennsylvania against such operator or owner of such motor vehicle or person in whose behalf such motor vehicle is being operated whether or not such person is the operator or owner, arising out of, or by reason of, any accident or collision occurring within the Commonwealth in which such motor vehicle is involved.

(b) A nonresident operator, owner, or person in whose behalf such motor vehicle is being operated whether or not such person is the operator or owner, of a motor vehicle which is involved in an accident or collision within this Commonwealth, shall be deemed to have consented that the appointment of the Secretary of the Commonwealth as his agent for the service of process, pursuant to the provisions of this section, shall be irrevocable and binding upon his personal representative, executor or administrator. Where the nonresident motorist has died, prior to the commencement of an action brought pursuant to this section, service of process shall be made on the personal representative, executor or administrator of such nonresident motorist in the same manner and on the same notice as is provided in the case of a nonresident motorist. Where an action has been duly

commenced, under the provisions of this section, by service upon a defendant who dies thereafter, if the personal representative, executor or administrator of such defendant does not voluntarily become a party, he may be substituted as a party under the applicable Rules of Civil Procedure, and service of process shall be made in the same manner and on the same notice as is provided in the case of a nonresident motorist.

(As amended by the Act of November 10, 1959, P.L. 1459)

Section 2. Such process shall be served, by the officer to whom the same shall be directed, upon the Secretary of the Commonwealth of the Commonwealth of Pennsylvania, by sending by registered mail, postage prepaid, at least fifteen (15) days before the return day of such process, a true and attested copy thereof, and by sending to the defendant, by registered mail, postage prepaid, a like true and attested copy, with an endorsement thereon of the service upon said Secretary of the Commonwealth, addressed to such defendant at his last known address. The registered mail return receipts of the Secretary of the Commonwealth and of such defendant shall be attached to and made a part of the return of service of such process: Provided, That if the defendant refuses to accept the notice mailed, or cannot be found at his last known address, the registered mail return receipt or other evidence of such facts shall be attached to and made a part of the return, and shall constitute sufficient service under the provisions of this section.

(As amended by the Act of February 17, 1956, P.L. 1068)

Section 3. The officer serving such process upon the Secretary of the Commonwealth shall pay to said secretary, at the time of service, a fee of five dollars ($5.00) for each process served, which fee shall be taxed as costs in the case. The Secretary of the Commonwealth shall keep a record of each such process and the day and hour of the service thereof upon him.

(As amended by the Act of February 17, 1956, P.L. 1068)

Section 4. The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to appear and defend the action.

Section 5. This act shall be construed to extend the right of service of process upon nonresidents and upon residents who subsequently become nonresidents or who conceal their whereabouts, and shall not be construed as limiting any provisions for the service of process now or hereafter existing.

(As amended by the Act of April 24, 1931, P.L. 50)

(Sections 4 and 5 are suspended by Pennsylvania Rule of Civil Procedure 2100 insofar as they provide a procedure which differs from that provided for by the Pennsylvania Rules of Civil Procedure.)

III. QUESTION PRESENTED

Does not a statute of the Commonwealth of Pennsylvania, construed by the Supreme Court of Pennsylvania to permit the acquisition of personal jurisdiction of non-resident defendants by service upon a designated official of the Commonwealth, deprive such defendants of due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States where the action in which such service is sustained is a civil suit against the owners and operator of a motor vehicle and arises out of a motor vehicle accident which occurred upon a military reservation, exclusive jurisdiction over which has been ceded to the United States, except for the right to serve civil process therein?

IV. STATEMENT OF THE CASE

Burdwell H. Shipe and Madge E. Shipe, his wife, Defendants and Appellants were, in May of 1961, residents of the Commonwealth of Pennsylvania and were the owners of an Oldsmobile automobile registered in the Commonwealth of Pennsylvania. Burdwell H. Shipe was at that time a member of the United States Army on active duty and was stationed at the New Cumberland General Depot, a federal reservation formerly a part of York County, Pennsylvania.

On May 26, 1961 Mrs. Shipe, who was licensed by the Commonwealth to operate a motor vehicle, was driving the family automobile in the area of the post exchange within the New Cumberland General Depot and there became involved in the accident upon which this suit is based.

Sometime subsequent to the date of the accident Colonel Shipe retired from active military service and he and Mrs. Shipe established residence in Sarasota, Florida where they were residing on September 26, 1962.

This suit was commenced on that date by the filing of a Complaint in the Court of Common Pleas of York County, Pennsylvania. Copies of the Complaint were thereafter sent by the Sheriff of York County to the Secretary of the Commonwealth of Pennsylvania and to Mr. and Mrs. Shipe by registered mail.

The issue presented here for adjudication was raised below by the prompt filing, on October 29, 1962 of an

objection to the Complaint, denominated a Preliminary Objection in accordance with Pennsylvania Practice, seeking to quash the service of the Complaint in which it was averred that the accident upon which the suit was based had occurred within the New Cumberland General Depot; that the Commonwealth of Pennsylvania had ceded to the United States exclusive jurisdiction over the land comprising the New Cumberland General Depot, or to be acquired as a part thereof,[1] over which concurrent juris-

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[1] Act of July 1, 1937, P.L. 2656, 74 P.S. 85-87:

AN ACT

To cede jurisdiction to the United States, over lands embraced within the boundaries of Carlisle Barracks, located in Cumberland County, and over the tract of land and buildings occupied by the New Cumberland General Depot, located in York County.

Section 1. Be it enacted, &c., That the jurisdiction of the State of Pennsylvania is hereby ceded to the United States of America, for the occupation and use for purposes of national defense, and for the erection and maintenance of the necessary buildings for the military or other public use of the United States, over all the lands now embraced within the boundaries of Carlisle Barracks Military Reservation, situate in Cumberland County, State of Pennsylvania, excepting roads abutting on said reservation, and that portion of the Carlisle-Harrisburg turnpike located within the boundaries thereof; and over all that tract of land comprising the New Cumberland General Depot, situate in York County, State of Pennsylvania, excepting roads abutting thereon, and those portions of the Marsh Run Road which lie within the boundaries thereof, and that portion of U. S. Highway No. 111 (old State Highway No. 333), which extends across the southeast corner for a distance of approximately two hundred seventy and one-half (270-½) feet.

Section 2. The jurisdiction, so ceded to the United States of America, is granted upon the express condition that the said State of Pennsylvania shall retain concurrent jurisdiction with the United States in and over the tracts of land

diction was reserved only for the execution of certain process therein; that the Commonwealth of Pennsylvania, at the time of the accident upon which the suit was based, and continuously thereafter, lacked jurisdiction over the New Cumberland General Depot and jurisdiction to regulate the operation of motor vehicles therein, and the United States exercised exclusive jurisdiction thereover; and that the accident upon which the suit was based did not occur within the Commonwealth of Pennsylvania within the meaning of the Pennsylvania Non-Resident Motorists Act, heretofore set forth, so as to constitute the Secretary of the Commonwealth the agent of the Defendants for the service of process.

The Appellee, Plaintiff below, filed an Answer to the Preliminary Objection which admitted the factual averments of the Preliminary Objection but averred that *service* of the Complaint had been made upon the Secretary of the Commonwealth and that the Commonwealth of

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aforesaid, in so far that civil process in all cases, and such criminal process as may issue under the authority of the State of Pennsylvania against any person or persons charged with crimes committed outside the limits of said lands, may be executed thereon in the same way and manner as if this jurisdiction had not been ceded. The United States shall retain such jurisdiction so long as the said tracts or parcels of land shall be used for the purposes for which jurisdiction is ceded, and no longer.

Section 3. That if at any time hereafter, any additional lands adjoining those above described shall be purchased by the United States for use of the said Carlisle Barracks Military Reservation or the New Cumberland General Depot, respectively, or for any other military purpose, this act shall be construed to vest in the United States jurisdiction over such additional lands to the same extent as is vested by this act over the tracts or parcels above described.

Pennsylvania had jurisdiction over the New Cumberland General Depot, had jurisdiction to regulate the operation of motor vehicles thereon and to sustain a provision for substituted service of process and that, for the purpose of service of process upon nonresident defendants, the New Cumberland General Depot was within the Commonwealth of Pennsylvania.

The narrow issue thus framed was argued to the Court of Common Pleas on February 11, 1963 which, in its opinion by Judge Buckingham, filed April 30, 1963 concluded:

> "We hold, therefore, that in this case, the New Cumberland General Depot is within the Commonwealth of Pennsylvania for the purposes of service of process provided for in Pennsylvania's Non-Resident Motorists Act of the Motor Vehicle Code, that proper service upon the Defendants was made thereunder and that the Court has jurisdiction of the person of the Defendants in this action. In view of the foregoing, the following Order is accordingly entered:
>
> And now, to wit, this 30th day of April 1963, the Defendants' Preliminary Objection to Plaintiff's Complaint is hereby dismissed and the Defendants are given leave to file an Answer thereto within twenty (20) days of the date of this Order.
>
> An exception is granted to the Defendants."

The Order of the Court of Common Pleas of York County was appealed to the Pennsylvania Supreme Court May 10, 1963, which lodged its Writ of Certiorari in the Court of Common Pleas of York County on May 11, 1963.

A single question was presented for adjudication to the Supreme Court of Pennsylvania:

> "Is service of process upon an official, designated by the Pennsylvania Nonresident Motorists Act, Act of May 14, 1929, P.L. 1721, as amended, 75 P.S. 2001, et seq., effective (within the limits of due process guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States) to acquire personal jurisdiction of defendants who have become nonresidents of the Commonwealth, where the cause of action upon which suit is brought arose within a federal reservation over which the Commonwealth has ceded exclusive jurisdiction to the United States, except for the right to serve civil process therein?"

Argument was had before the Supreme Court of Pennsylvania on October 10, 1963. The Court, in an opinion by Mr. Justice Cohen, filed April 21, 1964, affirmed the Order of the Court of Common Pleas of York County.

In so doing, the Court referred to the Act of Congress of February 1, 1928, 16 U.S.C. 457,[1] providing that in any action brought to recover on account of injuries sustained in a place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any state, the

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[1] In the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the State within whose exterior boundaries such place may be; and in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which it may be.

rights of the parties shall be governed by the laws of that state, and held:

> "... the Pennsylvania Nonresident Motorists Act is clearly a law of Pennsylvania which, by its own terms governs 'the rights of the parties' in an 'action brought to recover on account of injuries sustained in' a federal enclave located 'within the exterior boundaries' of Pennsylvania.
>
> The Pennsylvania Nonresident Motorists Act provides that a nonresident, or a resident who subsequently becomes a nonresident, appoints the Secretary of the Commonwealth as his agent to accept service of process for accidents or collisions 'occurring within the Commonwealth'. Does the phrase 'within the Commonwealth' embrace land within the geographical boundary rise of Pennsylvania which has been ceded to the Federal Government? We were confronted with a very similar question in Kiker v. Philadelphia, 346 Pa. 624, 31 A. 2d 289 (1943) .... Similarly, the words 'within the Commonwealth' in the Motorist Act were intended to encompass all territory within the geographical boundaries of Pennsylvania and this would include any federal enclave located therein. Thus, the court below correctly upheld the use of substituted service of process to attain jurisdiction over Appellants and the Order appealed from is affirmed.
>
> Order affirmed."

From this judgment the present appeals were taken. Notice of Appeal of Burdwell H. Shipe was served June

5, 1964 and was filed with the Court of Common Pleas of York County, June 8, 1964.

Following the taking of the appeal to the Supreme Court of Pennsylvania, and prior to argument thereon, Madge E. Shipe, one of the Defendants, died on September 1, 1963, a resident of Sarasota County, Florida. On June 5, 1964, Arthur M. Bell was appointed Administrator of the Estate of Madge E. Shipe, Deceased, and, on July 20, 1964, was substituted for Madge E. Shipe as a Named Party Defendant in the action. Notice of Appeal of Arthur M. Bell, as Successor and Administrator of the Estate of Madge E. Shipe, Deceased, was served July 17, 1964 and filed in the Court of Common Pleas of York County on July 20, 1964.

V. THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA IS A FINAL JUDGMENT

This suit is for the recovery of damages for personal injury and no final judgment on the merits of that claim has as yet been entered. It is submitted, however, that as to the narrow, separate issue of jurisdiction, the judgment of the Supreme Court of Pennsylvania is final.

Unlike the Federal practice, which permits a challenge to the jurisdiction of the court over the person of a defendant to be preserved,[1] once raised, under the Pennsylvania practice any steps taken in regard to the merits of the case would operate as a waiver of the jurisdictional question. Pennsylvania Rules of Civil Procedure, Rule 1017, limits pleadings in an action to the customary pleadings as well as a "Preliminary Objection" and further provides that preliminary objections are limited to five general defenses including (Rule 1017 (b) (1)), "A petition raising a question of jurisdiction." Rule 1028 requires all preliminary objections to be raised at one time and Rule 1032 provides that all defenses and objections, with exceptions not here applicable, are waived by failure to present either by preliminary objections, answer or reply.

No Pennsylvania case has been found dealing with assertion of lack of jurisdiction over the person following

[1] Federal Rules of Civil Procedure, Rule 12(b) "... No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion ..."; *Harkness v. Hyde*, 98 U. S. 476, 25 L. Ed. 237 (1878); *Southern Pacific Co. v. Denton*, 146 U. S. 202, 13 S. Ct. 44, 36 L. Ed. 942 (1892).

an adverse determination by the Pennsylvania Supreme Court. However, the policy of the Commonwealth of Pennsylvania would appear to prohibit the preservation of the question. The Act of March 5, 1925, P. L. 23, permits an immediate appeal on the jurisdictional question to the Supreme or Superior Court (Section 1, 12 P.S. 672). Moreover, Section 3 of that Act, 12 P.S. 674, requires that the appeal provided for must be taken and perfected within fifteen (15) days from the date the decision is rendered and further provides:

> "A failure to appeal within the time specified will be deemed a waiver of all objections to jurisdiction over the defendant personally."

The Supreme Court of Pennsylvania, in what appears to be its most recent consideration of the doctrine of waiver, has reaffirmed the longstanding Pennsylvania policy. *C. E. Williams Co. v. Henry B. Pancoast Co.*, 412 Pa. 166, 194 A. 2d 189 (1963), considered the propriety of the action of the trial court in refusing a petition for leave to withdraw a general appearance. In its opinion by Mr. Justice Benjamin R. Jones the court stated:

> "The principles of law which govern the instant case are well settled. When a defendant in a civil action enters a general appearance in answer to a summons, he cannot afterwards question the court's jurisdiction by an appearance de bene esse: 12 P.S. §672; Welser v. Ealer, 317 Pa. 182, 176 A. 429. By the entry of a general appearance *or any act which is equivalent thereof* [emphasis supplied], a defendant submits himself to the jurisdiction of the court and waives the right to challenge the jurisdiction of the

court over his person: Newman v. Shreve, 229 Pa. 200, 78 A. 79; English v. English, 19 Pa. S. Ct. 586."

"Under the Pennsylvania Rules of Civil Procedure, special appearances and appearance de bene esse have been abolished and preliminary objections now furnish the *exclusive* method of raising a question of jurisdiction encompassing lack of jurisdiction over the subject matter or lack of jurisdiction over the person. Now it may be said generally that an appearance for a purpose other than that of objecting to the jurisdiction of the Court is usually considered a general appearance."

Consequently, it would appear that Appellants, if unable at this time to secure a determination as to the jurisdiction over their persons, must either plead to the merits and thus waive the objection or must suffer a default judgment so as to reduce every aspect of the suit to a final judgment. There appears to be no constitutional requirement that a state permit a jurisdictional issue to be preserved for Appellate review, since there is a right to challenge a jurisdictional determination by collateral attack. *York v. Texas*, 137 U. S. 15, 11 S. Ct. 9, 34 L. Ed. 604 (1890).

To require Appellants, as an alternative to appearing generally in the action, to suffer a default judgment prior to appeal would effectively deprive Appellants of further review of the question in view of the substantial damages claimed in the Complaint.[1] The cause thus falls within

[1] The Complaint avers, inter alia:

13. That solely as a result of the negligence of the wife, and/or husband aforesaid, the plaintiff was caused to sustain

the class of cases in which the Supreme Court has, in the past, accepted appellate jurisdiction to review a final judgment on a separate aspect of a case which has not, in all respects, been reduced to final judgment. *Mercantile National Bank v. Langdeau*, 371 U. S. 555, 83 S. Ct. 520, 9 L. Ed. 2d 523 (1963); *Local No. 438 v. Curry*, 371 U. S. 542, 83 S. Ct. 531, 9 L. Ed. 2d 514, (1963); *Cohen v. Beneficial Industrial Loan Corporation*, 337 U. S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528, (1949); *Forgay v. Conrad*, 6 How. 201, 12 L. Ed. 404 (1848); *Ohio River Contract Co. v. Gordon*, 244 U. S. 68, 37 S. Ct. 599, 61 L. Ed. 997 (1917); e.f. *Republic Natural Gas Co. v. Oklahoma*, 334 U. S. 62, 68 S. Ct. 972, 92 L. Ed. 1212 (1948).

The issue raised here is similar to that raised in *Local No. 438 v. Curry*, 371 U. S. 542, 83 S. Ct. 531, 9 L. Ed. 2d 514 (1963), wherein this Court reversed the judgment of the Georgia Supreme Court that the trial judge had erred in refusing to enter an interlocutory injunction. The Supreme Court, in an opinion by Mr. Justice White, considered the finality of the judgment of the Georgia Supreme Court and said, at page 548 U. S. Reports:

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serious, severe and permanent injuries to the body of his person, inter alia, compounded fractures of both legs, requiring amputation of the right leg at mid-thigh; draining osteomyelitis at the fracture site of the left tibia; fracture of the right forearm; deep skin abrasions of the back and buttocks, requiring skin grafting; deep skin abrasions of lower left leg (front) requiring skin grafting; equinus deformity of the left foot, hepatitis and jaundice.

and further avers that the Plaintiff has incurred medical expenses (to September 26, 1962) of $7,504.10 and claims damages for these, for the value of medical care for which no expense was incurred, for future medical expenses, artificial limbs, shock, pain, and suffering, disfigurement, loss of earnings and loss of earning capacity.

"But we believe our power to review this case rests upon solid ground. The Federal questions raised by petitioner in the Georgia court, and here, is whether the Georgia courts had power to proceed with and determine this controversy. The issue ripe for review is not whether a Georgia court has erroneously decided a matter of federal law in a case admittedly within its jurisdiction (compare Gibbons v. Ogden, 6 Wheat. 448, 5 L. Ed. 302) nor is the question of whether federal or state law governs a case properly before the Georgia courts. Compare Local 174, Teamsters, etc. v. Lucas Flour Co., 369 U. S. 95, 82 S. Ct. 571, 7 L. Ed. 2d 593. What we do have here is judgment of the Georgia court finally and erroneously asserting its jurisdiction to deal with a controversy which is beyond its power and instead is within the exclusive domain of the National Labor Relations Board.

Whether or not the Georgia courts have power to issue an injunction is a matter wholly separate from and independent of the merits of respondents' cause. The issue on the merits, namely, the legality of the union's picketing, is a matter entirely apart from the determination of whether the Georgia court or the National Labor Relations Board should conduct a trial of the issue."

Although the *Curry* case dealt with a question of jurisdiction over the subject matter rather than over the person, it was there plainly recognized that the jurisdictional issue was a separate and distinct issue upon which a final judgment was appealable. In *Mercantile National Bank v. Langdeau*, 371 U. S. 555, 83 S. Ct. 520, 9 L. Ed. 2d 523 (1963), decided on the same day as *Curry*, this

Court considered its power to review a final judgment of a state court determining venue prior to an adjudication on the merits. The Supreme Court, again in an opinion by Mr. Justice White, stated at page 558, U. S. Reports:

> "Nonetheless, a substantial claim, appealable under state law, is made that a federal statute, rather than a state statute, determines in which state court a national bank may be sued and, as in *Curry*, prohibits further proceedings against the defendants in the state court in which the suit is now pending. This is a separate and independent matter, anterior to the merits and not enmeshed in the factual and legal issues comprising plaintiff's cause of action."

The foregoing cases would appear to establish clearly, if the law was not clear before, that a final determination by the highest court of a state that parties to the litigation are properly before the trial court is a final judgment within the meaning of 28 U. S. C. Section 1257 (2). Nor are these decisions a departure from the policy clearly set forth by the Supreme Court in prior decisions.

In *Cohen v. Beneficial Industrial Corporation*, 337 U. S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949), this Court granted certiorari to review the decision of the United States Court of Appeals requiring the submission of a bond by the plaintiff for costs in the action pursuant to a state statute, even though no decision had at that time been reached on the merits of the suit. In *Republic Natural Gas Co. v. Oklahoma*, 334 U. S. 63, 68 S. Ct. 972, 92 L. Ed. 1212 (1948), your Honorable Court refused to review on appeal a decision of the Supreme Court of Oklahoma requiring the appellant to purchase gas from

another upon terms and conditions to be determined in the future. Mr. Justice Frankfurter, in the opinion for the majority of the Court, reviewed in some detail the decisions of the Court as to finality of judgment and observed, at page 68, U. S. Reports:

> "There have been instances where the court has entertained an appeal of an order that otherwise might be deemed interlocutory, because the controversy had proceeded to a point where a losing party would be irreparably injured if review were unavailing."

In that case the appeal was dismissed on the ground that the appellant would not suffer irreparable harm. And in the oft-cited case of *Forgay v. Conrad*, 6. How. 201, 12 L. Ed. 404 (1848), it was determined that a decree, directing that property be delivered to another, although it did not dispose of the entire case below, was so prejudicial to the rights of the appellant that it carried the requisite finality for review.

Finally, it should be noted that the Supreme Court has determined, in a case quite similar to the present one, that the limited question of jurisdiction of the person is reviewable. In *Ohio River Contract Co. v. Gordon*, 244 U. S. 68, 37 S. Ct. 599, 61 L. Ed. 997 (1917), a suit was brought in Kentucky against the Contract Company, which had its principal place of business outside of Kentucky, and was doing work within a federal conclave within Kentucky, the defendant objecting to personal jurisdiction of the Kentucky courts.

> "The objections of the company to the jurisdiction were overruled and the case was set down for trial. Thereupon the company, desiring a review of the

> jurisdictional question, and in order to avoid the consequences of the rule under the Kentucky practice that the appearance of a party on appeal operates as a waiver of a claim of want of jurisdiction over his person [citing cases], applied to the court below for a Writ of Prohibition directed to the trial judge to restrain him from proceeding further in the cause."

The review by the Supreme Court followed a final determination on the Writ of Prohibition that the Kentucky court did have jurisdiction. In the present case, the procedure adopted by the Pennsylvania courts and legislature would not permit the use of a Writ of Prohibition, but instead requires that objection to jurisdiction be raised by preliminary objection and, as a part of the overall plan of determination, provides for an immediate review of that question by the Pennsylvania Supreme Court. That a different procedure is required by Pennsylvania from that permitted by Kentucky in the *Ohio River Contract Co.* case should not require a different conclusion as to the reviewability of the state decision. It is respectfully submitted that the judgment of the Pennsylvania Supreme Court in the instant case is a final judgment within the meaning of 28 U. S. C. 1257 (2).

VI. THE FEDERAL QUESTION INVOLVED IS SUBSTANTIAL

The question presented herein involves the interaction of two rules of law firmly established by prior decisions of the Supreme Court. It has long since been determined that when land is acquired by the United States with the consent of the state within which it lies, the state is without jurisdiction thereover. *Surplus Trading Company v. Cook*, 281 U.S. 647, 50 S. Ct. 455, 74 L. Ed. 1091 (1930); *Pacific Coast Dairy, Inc. v. Department of Agriculture of California*, 318 U.S. 285, 63 S. Ct. 628, 87 L. Ed. 761 (1943), rehearing denied 318 U.S. 801, 63 S. Ct. 849, 87 L. Ed. 1165. The basis for this determination is found in the Constitution of the United States, Article I, Section 8, Clause 17 which provides that Congress shall have power:

> "To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten miles square), as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings; . . ."

The same rule has been held to be true where land has been acquired by the United States and the state within which the land lies later cedes jurisdiction. *Fort Leavenworth Railroad Company v. Lowe*, 114 U.S. 525, 5 S. Ct. 995, 29 L. Ed. 264 (1885); *United States v. Unzueta*, 281 U.S. 138,

50 S. Ct. 284, 74 L. Ed. 761 (1930); *James v. Dravo Contracting Company*, 302 U.S. 134, 58 S. Ct. 208, 82 L. Ed. 155 (1937).

It has also been held that a state may, in ceding jurisdiction to the United States, reserve some portion of its jurisdiction over the land ceded: *Fort Leavenworth Railroad Company v. Lowe* (supra); *United States v. Unzueta* (supra); *James v. Dravo Contracting Company* (supra). Similarly, the United States may recede to the states limited jurisdiction over federal enclaves: *Howard v. Commissioners of Sinking Fund*, 344 U.S. 624, 73 S. Ct. 465, 97 L. Ed. 617 (1953).

In another line of cases the Supreme Court has considered the evolving basis for the assertion by a state of jurisdiction over the persons of defendants not physically within the state. The development of the automobile and the inherent risk to life and limb induced your Honorable Court to depart from the requirement of personal service within a state, established by *Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed. 565 (1878). It was held, in *Hendrick v. Maryland*, 235 U.S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1914), that a state might, by the exercise of its police power, regulate the use of its highways by the requirement of a license. In *Kane v. New Jersey*, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916), it was held that a state, pursuant to its police power, might require not only the registration of an automobile of a nonresident motorist but might further require that such motorist appoint a state official for the acceptance of service of process in an action arising out of his operation of a motor vehicle within the state. Finally, it was determined in *Hess v. Pawlosky*, 274 U.S. 352, 47 S. Ct. 632, 71 L. Ed. 1091 (1927), that a state might

constitutionally provide by statute for service of process upon an official of a state to acquire personal jurisdiction over a nonresident motorist in a suit arising from the operation of a motor vehicle within the state. Again the basis for the determination that a state could so provide was the recognition that the state, in the proper exercise of its police power, might make regulations reasonably calculated to promote care on the part of all who use its highways. A year later, *Wuchter v. Pizzutti*, 276 U.S. 13, 48 S. Ct. 259, 72 L. Ed. 446, 57 A.L.R. 1230 (1928), appended the requirement that a statute providing for service upon a state official as an "Agent" for a nonresident motorist must also provide a reasonable method of giving actual notice of the suit to the defendant.

The other most common basis for the assertion of personal jurisdiction over a nonresident is the doing of business within the jurisdiction of a state. It is in such cases that the major development in the acquisition of personal jurisdiction by substituted service has occurred.

International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), firmly established a departure from the traditional requirement that a defendant, in order to be subjected to the jurisdiction of the forum must be "present" in the state of the forum, or have "consented" to be sued therein or have "appointed" an agent for the service of process. Instead, a requirement of "minimal contact" was substituted as being more realistic and not offensive to the traditional notions of fair play and substantial justice. The basis for the Court's decision appears to be set forth succinctly in the Opinion of Mr. Chief Justice Stone at page 319 U. S. Reports:

"But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue."

Similarly, in *Travelers Health Association v. Virginia*, 339 U.S. 643, 70 S. Ct. 927, 94 L. Ed. 1154 (1950), this Court upheld the jurisdiction of the Commonwealth of Virginia to subject a Nebraska association to jurisdiction in Virginia on the basis that insurance policies of the Nebraska association were owned by Virginia residents. In *McGee v. International Life Insurance Company*, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957), it was again held that an insurance policy delivered in California, for which premiums were mailed from California, was sufficient basis to subject the insurance company to suit in California.

The foregoing cases are not to be interpreted to have eliminated the traditional bases of jurisdiction, however. In *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958), Mr. Chief Justice Warren, in the Opinion for the majority, holding that the State of Florida lacked jurisdiction to determine the validity of a trust, said at page 251 U. S. Reports:

"As technological progress has increased the flow of commerce bewteen States, the need for jurisdiction over nonresidents has undergone a similar increase.

At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of Pennoyer v. Neff, 95 U.S. 714, 24 L. Ed. 565, to the flexible standard of International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of State Courts. See Vanderbilt v. Vanderbilt, 1 L. Ed. 2d 1456. *Those restrictions are more than a guarantee of immunity from inconvenience or distant litigation. They are a consequence of territorial limitations on the power of the respective states.* However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has the 'minimal contacts' with that state that are a prerequisite to its exercise of power over him. See International Shoe Co. v. State of Washington, 326 U.S. 310, 319, 66 S. Ct. 154, 159, 90 L. Ed. 95." (Emphasis added.)

And, considering the applicability of the state milk regulation to sales within a federal enclave, the Supreme Court in *Pacific Coast Dairy, Inc. v. Department of Agriculture of California*, 319 U.S. 283, 63 S. Ct. 628, 87 L. Ed. 761 (1943), emphasized the importance and effect of the jurisdictional determination. Mr. Justice Roberts, speaking for the Court, said, at page 295 U. S. Reports:

"We have this day held in Penn Dairies, Inc. v. Milk Control Commission, 318 U.S. 261, 63 S. Ct. 617, 87 L. Ed. [748 (1943)] that a different decision is

required where the contract and the sales occur within a state's jurisdiction, absent specific national legislation excluding the operation of the State's regulatory laws. The conclusions may seem contradictory; but in preserving the balance between national and state power, seemingly inconsequential differences often require diverse results. This must be so, if we are to accord to various provisions of fundamental law their natural effect in the circumstances disclosed. So to do is not to make subtle or technical distinctions or to deal in legal refinements. Here we are bound to respect the relevant constitutional provision with respect to the exclusive power of Congress over federal lands . . ."

It is respectfully submitted that, where the United States has exclusive jurisdiction over land within a state, the state within which the Federal enclave lies has no interest in events occurring therein sufficient to justify the imposition of conditions or burdens upon property or activities therein. See *Humble Pipeline Co. v. Waggoner*, 376 U.S. 369, 84 S. Ct. 857, 11 L. Ed. 2d 782 (1964). If the basis upon which a state may authorize substituted service of process upon a nonresident motorist is its interest in the events or transactions occurring within its jurisdiction and the benefit derived by the individual from the protection of the state, then there is no basis in the police power of the state or otherwise upon which a state may constitutionally authorize substituted service of process upon a nonresident motorist in a suit resulting from injuries alleged to have occurred within a Federal enclave.

It is true that in the present case the Commonwealth has ceded to the United States jurisdiction over the land

comprising the New Cumberland General Depot and has, at the same time, reserved for itself:

> ". . . concurrent jurisdiction with the United States in and over the tracts of land aforesaid, insofar as civil process in all cases, and such criminal process as may issue under the authority of the State of Pennsylvania against any person or persons charged with crimes committed outside the limits of said lands, may be executed thereon in the same way and manner as if this jurisdiction had not been ceded. The United States shall retain such jurisdiction so long as the said tracts or parcels of land shall be used for the purposes for which jurisdiction is ceded and no longer."
>
> (Act of July 1, 1937, P. L. 2636, Section 2, 74 P.S. 86.)

The jurisdiction thus reserved does not provide a basis for substituted service in this case. Here such service as was made was made upon the Secretary of the Commonwealth of Pennsylvania, located outside of the Federal reservation. What the Appellee has attempted to do is treat the operation of the motor vehicle by Mrs. Shipe within the New Cumberland General Depot as operation within the Commonwealth of Pennsylvania so that the substituted service provisions of the Nonresident Motorists Act are effective. *If the Commonwealth lacks jurisdiction within the New Cumberland General Depot to regulate the operation of motor vehicles therein, then it also lacks that "minimal contact" essential to its acquisition jurisdiction over the Appellants in the absence of personal service of process.*

It is true, also, that the Federal Government may recede to the states certain jurisdiction over Federal enclaves and has done so, for example, to permit certain taxation by the states within Federal reservations: Buck Act, Act of July 30, 1947, 4 U.S.C. 104-110; *Howard v. Commissioners of Sinking Fund*, 344 U.S. 624, 73 S. Ct. 465, 97 L. Ed. 617 (1953). The Supreme Court of Pennsylvania appears to have concluded that Congress had also receded to the United States certain jurisdiction by the Act of February 1, 1928, 16 U.S.C. 457.[1] The Pennsylvania Supreme Court was mistaken.

Prior to the enactment of that section it appeared that the law of a state, existing at the time of the cession of jurisdiction to the United States, became the Federal law applicable to the ceded territory but that subsequent changes in the law of the ceding state did not affect the law applicable to the enclave. *Arlington Hotel Co. v. Fant*, 278 U.S. 439, 49 S. Ct. 227, 73 L. Ed. 447 (1929). (Held that the common law rule as to the liability of innkeepers prevailing in the State of Arkansas at the time jurisdiction was ceded over Hot Springs, Arkansas, was applicable to the cause of action asserted rather than the law of Arkansas as subsequently changed by statute.) The purpose

[1] "In the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the State within whose exterior boundaries such place may be; and in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which it may be."

of the Act of 1928 was only to assure that the substantive law of Federal reservations should coincide with that of the state within which they lie. This view is supported by the decision of this Court in *Murray v. Joe Gerrick & Co.*, 291 U.S. 315, 54 S. Ct. 432, 78 L. Ed. 821, 92 A.L.R. 1259 (1934), wherein it was held that the Federal statute referred only to a *right of action at law*.

This interpretation is substantiated by the legislative history of the Act. House of Representatives Report No. 367, 70th Congress, 1st Sessions, contains the report of the Judiciary Committee relating to the bill then under consideration and stated:

> "It provides that a *right of action* shall exist as though the place were under the jurisdiction of the State and that the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which the national park or other Government reservation may be." (Emphasis supplied.)

The discussion of the bill before the Senate is contained in 69 Congressional Record 1486 and reflects that the Act was primarily intended to confer upon representatives or dependents of persons suffering death as the result of wrongful act or neglect of another, the right of recovery for wrongful death where that right existed in the surrounding state.

James Stewart & Co. v. Sadrakula, 309 U.S. 94, 60 S. Ct. 431, 84 L. Ed. 596, 127 A.L.R. 821 (1940), involved the similar question of whether certain safety provisions of the New York Labor Law became Federal law with the cession of jurisdiction of territory to the United States. The Court held that these provisions, conferring a right of

action, did become Federal law, but in so doing, commented upon the limitations inherent in the Federal adoption of state law. Mr. Justice Reed, in his Opinion for the Court, said, at page 102, U. S. Reports:

> "With the domestication in the excised area of the entire applicable body of state municipal law much of the state law must necessarily be inappropriate. Some sections authorize quasi-judicial proceedings or administrative action and may well have no validity in the Federal area."

And the Court there quoted with approval the Opinion of Judge Williams in *Oklahoma City v. Sanders*, 94 F. 2d 323, 115 A.L.R. 363 (10th Cir. 1938), in which the Court determined that a local municipality could not enforce certain municipal codes and ordinances relating to inspections and permits for construction upon land within the exclusive jurisdiction of the United States and said, at page 327:

> "Though the United States lacks the police power reserved to the states by the Tenth Amendment, yet, when it exerts a power conferred on it by the Federal Constitution, it is no valid objection that such exercise may be attended by the same incidents which attend the exercise by a state of its police power, or that it may tend to accomplish a similar purpose. Hamilton v. Kentucky Distillers & Warehouse Co., 251 U.S. 146, 40 S. Ct. 106, 64 L. Ed. 194, and authorities therein cited.
>
> "The cession of exclusive jurisdiction over premises acquired by the United States government, in-

cludes the power of regulation and control in such matters as ordinarily fall within the police power of the state."

The sole purpose of the 1928 Act, 16 U.S.C. 457, was to insure that the substantive law of a federal enclave should remain identical with that of the surrounding state. There is no indication whatever that by that Act Congress intended to abdicate the supreme Federal authority in the government of Federal areas.

The question here presented is whether the service of process utilized in the present case meets the minimum requirements of due process and has been repeatedly determined to be a substantial question. *Hess v. Pawlosky*, 274 U.S. 352, 47 S. Ct. 632, 71 L. Ed. 1091 (1927); *Wuchter v. Pizzutti*, 276 U.S. 13, 48 S. Ct. 259, 72 L. Ed. 446, 57 A.L.R. 1230 (1928); *International Shoe Co. v. State of Washington*, 362 U.S. 301, 66 S. Ct. 154, 90 L. Ed. 95 (1945); *Travelers Health Association v. Virginia*, 339 U.S. 643, 70 S. Ct. 927, 94 L. Ed. 1154 (1950); *McGee v. International Life Insurance Co.*, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957). The question also involves the continued vitality of existing state regulations over the operation of motor vehicles in a ceded federal area, likewise a substantial question. *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 60 S. Ct. 431, 84 L. Ed. 596, 127 A.L.R. 821 (1940); *Murray v. Joe Gerrick & Co.*, 291 U.S. 315, 54 S. Ct. 432, 78 L. Ed. 821 (1934); *Arlington Hotel Co. v. Fant*, 278 U.S. 439, 49 S. Ct. 227, 73 L. Ed. 447 (1929).

Moreover, the question here presented is not dependent upon unusual circumstances. In the years since 1940,

the majority of the male population of this country has been expected to perform military service, frequently far from home. The decision of the Pennsylvania Supreme Court would require that these men, following completion of their military duties, can be required to return to a state within which a former duty station lies to defend a suit arising from an automobile accident, despite the fact that the accident occurred within a military reservation and that the defendant's presence there was involuntary.[1]

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[1] A number of cases involving vehicular collisions within Federal enclaves have reached the courts. *Olsen v. McPartlin*, 105 F. Supp. 561 (D.C. Minn. 1952), held that there was Federal jurisdiction over an accident within the Fort Snelling Military Reservation. No question of personal jurisdiction was raised. *Stokes v. Adair*, 265 F. 2d 662 (4th Cir. 1959), cert. den. 361 U.S. 816, 80 S. Ct. 56, 4 L. Ed. 2d 62, held that there was Federal jurisdiction in an action by one Virginia resident against another Virginia resident based on injuries suffered in an automobile accident on the Fort Leavenworth Military Reservation. Again there was no question raised as to personal jurisdiction. To the same effect was the holding in *Mater v. Holley*, 200 F. 2d 123 (4th Cir. 1952), a case involving an auto accident within the boundaries of Fort McPherson, Georgia. In *Reed v. Charizio*, 183 F. Supp. 52 (D.C. E.D. Va. 1960), the Court considered a suit brought by a resident of Pennsylvania against a resident of Connecticut in the Federal Courts in Virginia. The Court held there was Federal jurisdiction but that venue was improper. Again there was no discussion of personal jurisdiction. *Cantrell v. Haas*, 161 F. Supp. 433 (D.C. W.D. N.C. 1958), involved a suit against a nonresident defendant served under the applicable North Carolina statute in an action arising from a collision within the Fort Bragg Military Reservation. The Court overruled a motion to quash the service of process. However, it appears from the opinion that the defendant did file an answer on the merits and that either Fort Bragg was not subject to the exclusive jurisdiction of the United States or the effect of such exclusive jurisdiction was not considered.

Federal Question Is Substantial

The question presented to this Court is substantial under prior decisions of this Court and is significant to Appellants and others who can be expected to be placed in similar circumstances. The judgment of the Pennsylvania Supreme Court has disregarded settled principles of law established by this Court. The question presented

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Cases in which the courts have sustained an objection to jurisdiction appear to have been based upon the construction of the acts of the states involved as applying only to public highways. See: *Myers v. Vandazea*, 202 F. Supp. 878 (D.C. N.D. Ala. 1962) (accident within Redstone Arsenal Federal Reservation); *Camden v. Harris*, 109 F. Supp. 311 (D.C. W.D. Ark. 1953) (accident on Camp Chaffee, Arkansas Reservation); and *O'Sullivan v. Brown*, 171 F. 2d 199 (5th Cir. 1948) (accident in the federal reservation operated by the Consolidated Vultee Aircraft Corporation in Fort Worth, Texas); *Cabe v. Edwards*, 107 Ga. App. 551, 130 S.E. 2d 803 (1963) (accident on road within Fort Benning, Georgia). Contra: *Bertrand v. Wilds*, 198 Tenn. 543, 281 S.W. 2d 390 (1955) (accident on grounds of Veterans' Administration hospital, exclusive jurisdiction over which had been ceded to the United States).

This last cited case aptly illustrates the issue here presented. In a three to two decision, the majority of the Tennessee Court held that a driveway on the Veterans' Administration Hospital grounds was a public highway within the meaning of the Tennessee Nonresident Motorists Act. The minority, in a dissenting opinion by Mr. Justice Tomlinson, stated, at page 394, S.W. 2d:

> "The road upon which this traffic accident occurred was within the premises belonging to the United States Veterans' Administration; that is, the United States Government. The United States has exclusive jurisdiction of these premises and the roads therein. The State of Tennessee has no jurisdiction whatsoever over these premises or the roads therein.
>
> ". . . Mr. Justice Prewitt and I are of the opinion that the State of Tennessee has no authority to require a nonresident to agree to anything as a condition precedent to the use of a road or highway over which the State of Tennessee has no jurisdiction whatsoever."

is so substantial as to require plenary consideration, with briefs on the merits and oral argument, for its resolution.

Respectfully submitted,

WILHELM E. SHISSLER,
DAVID C. EATON,
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Attorneys for Appellants.

APPENDIX A

IN THE COURT OF COMMON PLEAS OF
YORK COUNTY, PENNSYLVANIA

No. 172 October Term 1962

Action in Trespass

Thomas J. Lennan

vs.

Madge E. Shipe and Burdwell H. Shipe

OPINION

Plaintiff filed a Complaint for personal injuries received May 26, 1961, when he was struck by a vehicle operated by Defendant, Madge E. Shipe, and owned by both Defendants, within the boundaries of the New Cumberland General Depot. At the time of the accident, both Plaintiff and Defendants were residents of Pennsylvania. The vehicle of the Defendants was licensed under the laws of Pennsylvania, and Madge E. Shipe was licensed to operate the vehicle by the same laws. It is apparent that the New Cumberland General Depot is within the boundaries of York County and of the Common-

wealth of Pennsylvania, and was ceded by Pennsylvania to the United States, reserving certain rights for service of process.

When this action was started, the Defendants were residents of the State of Florida. Service was made by substituted service through the Secretary of the Commonwealth of Pennsylvania, under the Non-Residents Motorist Act of the Motor Vehicle Code, Act of 1929, May 14, P. L. 1721, as amended. (75 P.S. 2001.)

The Defendants have preliminarily objected to the Complaint by a petition raising the question of jurisdiction of this Court, attacking the validity of service of the Complaint as stated above. The Plaintiff has filed an Answer to the Defendants' Objection, admitting the factual allegations, but denying Defendants' averments that the Commonwealth of Pennsylvania lacked jurisdiction over the Depot and jurisdiction in any manner to regulate the operation of motor vehicles therein and has no basis to sustain a provision for substituted service of process to secure jurisdiction over the persons or the Defendants and that the events did not occur within the Commonwealth of Pennsylvania within the meaning of the aforesaid Act of 1929 so as to constitute the Secretary of the Commonwealth the agent of the Defendants for the service of process.

The only issue in this case, therefore, is the New Cumberland General Depot within the Commonwealth of Pennsylvania, and the County of York, for the purpose of service of process under the aforesaid Non-Resident Motorist Act. Pennsylvania's Non-Resident Motorist Act provides:

"(a) From and after the passage of this act . . . *any resident of this Commonwealth, being the licensed operator or owner* of any motor vehicle under the laws of this Commonwealth, or being a person in whose behalf a motor vehicle is being operated whether or not such person is the operator or owner, *who shall subsequently become a nonresident* shall, by such . . . licensure, and by the operation of such motor vehicle within the Commonwealth of Pennsylvania, make and constitute the Secretary of the Commonwealth of Pennsylvania, his, her or their agent for the service of process in any civil suit or proceeding instituted in the courts of the Commonwealth of Pennsylvania, or in the United States District Courts of Pennsylvania against such operator or owner of such motor vehicle or person in whose behalf such motor vehicle is being operated whether or not such person is the operator or owner, arising out of, or by reason of, any accident or collision occurring within the Commonwealth in which such motor vehicle is involved." (Emphasis supplied.)

Defendants concede the constitutionality and validity of the Act, but their position is that for service of process under this Act, the Depot is separate and apart from the rest of the state. In support of this, they argue that since Pennsylvania ceded the lands comprising the Depot to the United States they thereby ceded exclusive jurisdiction for all purposes, thereby creating a state within a state. However, we feel that Defendants have failed to distinguish between exclusive legislative jurisdiction and jurisdiction of the person for other purposes, e.g., service of process. To us the two are separate and distinct and different rules apply.

The lands comprising the Depot were ceded to the United States Government by the following acts of the Pennsylvania legislature, to wit:

(a) Act of July 1, 1937, P. L. 2654 et seq., 74 P.S. 95, 97, ceding 72.96 acres "situate in the Township of Fairview and County of York", the Commonwealth ceded "exclusive jurisdiction on and over the . . . lands . . . for all purposes except the service thereon of all civil and criminal processes of the Courts of this Commonwealth . . ."

(b) Act of July 1, 1937, P. L. 2656, 74 P.S. 85, providing, inter alia, "The jurisdiction of the States of Pennsylvania is hereby ceded to the United States of America, for the occupation and use, for purposes of national defense, and for the erection and maintenance of the necessary buildings . . . over all that tract of land comprising the New Cumberland General Depot, situate in York County, State of Pennsylvania, excepting roads abutting thereon . . ."

(c) Act of 1937, July 1, P. L. 2656, Section 2, 74 P.S. 86, providing, inter alia, "The jurisdiction so ceded to the United States . . . is granted upon the express condition that the said State of Pennsylvania shall retain concurrent jurisdiction with the United States *in and over* the tracts of land . . . insofar that *civil process in all* cases, and such *criminal process*, as may issue under the authority of the State of Pennsylvania against any person or persons charged with crimes committed *outside* the limits of said lands, may be executed thereon *in the same way and manner as if this jurisdiction had not been ceded.*"

(d) Act of July 10, 1947, P. L. 353, Section 1, 74 P.S. 120.11 ceding 3.88 acres, more or less of tract "situate in Fairview Township, York County, Pennsylvania, for use in connection with a military reservation, officially designated New Cumberland General Depot . . ."

(e) Act of Assembly, 1947, June 10, P. L. 533, Section 3, 74 P.S. 120.113, providing, inter alia: "The jurisdiction so ceded to the United States is granted upon the *express condition that the Commonwealth of Pennsylvania shall retain concurrent jurisdiction* with the United States in and over the land and buildings aforesaid insofar that *civil process in all cases*, and such criminal process as may issue under the authority of the Commonwealth of Pennsylvania against anyone charged with *crime committed* outside said land may be executed thereon *in the same manner as if this jurisdiction had not been ceded* . . ." (Emphasis supplied.)

The lands were acquired by the United States pursuant to Article 1, Section 8, Clause 17 of the Constitution of the United States which provides that Congress shall have power:

"to exercise exclusive Legislation in all Cases whatsoever, over such District, (not exceeding ten Miles square) as may by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States and to exercise like Authority over all Places purchased by the Consent of the Legislature of the States in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards and other needful Buildings."

The general rule regarding a reservation of jurisdiction by a state on lands ceded to the United States is that a reservation is valid "so long as it is not inconsistent with or does not interfere with the federal government's use of the land. United States v. Unzueta, 281 U.S. 138 (1930); James v. Dravo Contracting Co., 302 U.S. 134, 147. This rule was recited in Kiker v. Philadelphia, 346 Pa. 624, 629, 630 (1943), the Court saying at page 629:

> "However, it is now well settled that in granting consent to the federal government, a State can reserve to itself such jurisdiction . . . as will not interfere with the enjoyment by the government of the United States of the property for the uses and purposes for which it was obtained: James v. Dravo Contracting Co., 302 U.S. 134 . . .

And at page 630:

> "On the same day it was also said by that tribunal, in this connection, in Mason v. Tax. Comm., 302 U.S. 196, 207-8, 'The mere fact that the Government needs title to property within the boundaries of a state, which may be acquired irrespective of the consent of the state (Kohl v. U.S., 91 U.S. 367, 371, 372), does not necessitate the assumption by the Government of the burdens incident to an exclusive jurisdiction. We have frequently said that our system of government is a practical adjustment by which the national authority may be maintained in its full scope, without unnecessary loss of local efficiency. In acquiring property, the federal function in view may be performed without disturbing the local administration in matters which may still appropriately pertain to state authority."

A reservation of concurrent jurisdiction over execution of process has long been held not to be inconsistent or interfere with the federal government's use of the land. In Manlove v. McDermott, 308 Pa. 384 (1932) that specific issue was decided when the Court upheld service of civil process (assumpit) made by the Sheriff of Philadelphia County upon a Navy Officer on the premises of the Philadelphia Navy Yard which had once been part of Philadelphia and was ceded to the United States on the condition, "That nothing herein contained shall be constituted to interfere with the service of civil or criminal process within the premises herein mentioned." The Court said at page 386:

> "Action under similar reservations of the right to serve civil and criminal process on lands so ceded to the Federal Government had been held not to interfere with the supremacy of the United States over the land ceded; on the contrary, such action is supported in order that the land ceded may not become a refuge for persons fleeing from the police or the sheriff: United States v. Cornell, 2 Mason 60, Fed. Cas. No. 14867; Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525 . . .

And at page 387:

> The power to serve process there was reserved by the state and recognized by the United States . . ."

It could not be said in the Manlove case that since Pennsylvania had the right to execute its civil process in the Navy Yard under its reservation, that it also had exclusive *legislative* jurisdiction, for that had been ceded to the federal government whose substantive laws would

govern conduct on the base. The jurisdiction ceded and the jurisdiction reserved are separate and distinct.

In the case before us, we feel that Pennsylvania has retained concurrent jurisdiction *for service of* process, and that reservation is not inconsistent with *exclusive legislative jurisdiction* in the federal government.

In Knott v. Furman 163 F. 2d 199 (CCA, 4th—1947), certiorari denied, 332 U.S. 809, rehearing denied, 332 U.S. 826, the question now before us was decided favorably toward the Plaintiff. In that case, the Defendant, a Delaware Corporation with its principal office in New York, entered into a contract with the federal government to operate a hotel situated at Old Point Comfort, Virginia, located entirely within the confines of the Fort Monroe Military Reservation on land ceded by the State of Virginia. The Defendant corporation was not registered to do business in Virginia and performed no other activities in that state. In the statute ceding the land to the U.S., Virginia reserved the right to execute civil and criminal process over the ceded lands. The Plaintiff, a guest at the hotel and a resident of Massachusetts, was injured during a fire at the hotel and instituted a personal injury action in the U.S. District Court of Virginia, *obtaining service over the Defendant via substituted process upon the Secretary of the Commonwealth of Virginia as a corporation doing business* within the State of Virginia. The Defendant attacked jurisdiction, contending, inter alia, that since the only business done was on a federal reservation, it was not doing business within Virginia within the meaning of the Act. This argument was rejected. The Court said at page 202:

"We shall point out later, that for the purpose of venue, the doing of business on the Fort Monroe Military Reservation does not differ from doing business elsewhere in the Eastern District of Virginia; and we think it clear that such doing of business amounts to consent to the service of process upon the Secretary of the Commonwealth of Virginia and consent to be sued in the federal courts of the district *as well as in the state courts with respect to a cause of action which has arisen there.*" (Emphasis supplied.)

And at page 206:

"We come, then, to the question as to whether the application of the statute (substituted service by doing business within the state) is different because the business done was on the Fort Monroe Military reservation. *We do not think so* . . .

If this provision (reservation of execution of process of the ceding statute) means anything, it means that the laws of the State of Virginia with reference to the service of process run throughout the reservation. This means, of course, not only that state officers may go upon the reservation to serve process, but also that state laws as amended, from time to time will determine what acts on their part constitute service . . ." (Parenthesis and emphasis supplied.)

"Since the state has retained the right to serve process on foreign corporations as well as on others within the reservation and has the power to say what shall constitute such service, *it follows that any act*

> *which may be legally taken as an acceptance of service elsewhere within the state may be so taken within the reservation.* This necessarily means that the doing of business by a foreign corporation within that reservation has the same effect, so far as submitting itself to the local jurisdiction for the service of process is concerned, as doing business elsewhere within the state." (Emphasis supplied.)

It would seem, therefore, that for the purposes of service of civil process the geographical boundaries of a federal reservation are non-existent and the lands of the federal enclave and the rest of the state are one and the same. As in the *Knott* case, since Pennsylvania had the right to reserve jurisdiction for service of process and had the power to say what shall constitute service under the Non-Resident Motorist Act, it follows that any act which may be legally taken as an acceptance of service elsewhere within the state may be so taken within the Depot.

Knott, supra, specifically distinguishes exclusive legislative jurisdiction from jurisdiction for service of process. Our conclusion is that ceding lands to the Federal Government does not transfer exclusive jurisdiction for all purposes, as the Defendants have argued. Generally, jurisdiction over the ceded lands is retained by the state, unless that jurisdiction is inconsistent or interferes with the function of the federal government on the ceded lands. Therefore, in deciding whether federal lands, in effect, become a state within a state for jurisdictional purposes the Courts have looked to the purpose of the state law or statute which is attempted to be enforced on the federal land.

In Kiker, supra, League Island (Philadelphia Navy Yard) had once been part of the City of Philadelphia before it was ceded to the Federal Government. Pennsylvania did not reserve the right to tax income on the ceded land. Thereafter, Congress enacted the *Buck Act*, 4 U.S.C.A. 101-110 (1940), permitting states, inter alia, to tax income earned on federal reservations. The City of Philadelphia then enacted an ordinance taxing salaries, wages, etc. "for work done or service performed in that City." The Plaintiff, an employee of the federal government and a resident of New Jersey moved to enjoin collection of the tax as an attempt to collect a tax for "compensation for services . . . rendered outside the City." After holding that the state could have reserved the right to tax in the ceding statute (citing James v. Dravo Contracting Co., 302 U.S. 134) the federal government had the power to recede that right to the state as not being an interference with the function of the federal government on the ceded lands, and therefore for that purpose (taxing ordinance) the Navy Yard was part of Philadelphia. The Court in this regard said (p. 639):

> "Plaintiff argues that the phrase of the ordinance 'in Philadelphia' excluded League Island because it is not within Philadelphia. This contention is without merit, for obviously that phrase was intended to mean within the geographical limits of that City."

Present Defendants have referred to many Criminal Cases which we feel in view of the wording of Pennsylvania's Cession Act, are clearly not in point.

In Stokes v. Adair, 265 F. 2d 662 (1959), certiorari denied 361 U.S. 816, an action under 16 U.S.C.A. 457 was

instituted in the U. S. District Court of Virginia (residence of both parties) for an accident occurring on the U. S. Military Reservation at Fort Leavenworth, Kansas. Jurisdiction (lack of diversity) was attacked and the Court held there was jurisdiction under 16 USCA 457, saying pp. 664-666):

> ". . . it has become clear that although the laws of the state governing the private rights of individuals persist in the ceded territories, they do not derive their authority from the state but from the Federal Government which has acquired *exclusive legislative jurisdiction*. In effect, the acceptance of jurisdiction over the ceded territory *is tantamount to an adoption* of the existing state laws by the Federal Government (citing Stewart & Co. v. Sadrakula 309 U.S. 94, 60 S. Ct. 431)."

and at page 666:

> "This decision does not mean that an action for personal injuries inflicted on a federal reservation *may not be tried in a state court*. On the contrary, it is settled that actions for personal injuries being transitory in nature may be impleaded. Ohio River Contract Co. v. Gordon, 244 U.S. 68, 72 . . ." (Emphasis supplied.)

Before jurisdiction of the person can be had by substituted service, there must be minimal contacts with the state. International Shoe Co. v. State of Washington, 326 U.S. 310, McGee v. International Life Insurance, 355 U.S. 220. Due process requires this. In Heidig vs. Century Sprinkler Corp., 60 Dauphin 585 (1950), the Court held that a foreign corporation, not doing business in Penn-

sylvania and having only one contract with the federal government to do some work within the Middletown Air Depot, could not be served through the Secretary of the Commonwealth in an assumpsit action brought against it in Dauphin County by a Pennsylvania resident. The language of the act ceding the Middletown Depot to the United States is identical to that in the Act ceding the New Cumberland Depot to the United States. The Court stated at page 589:

> "The Defendant's contract was with the federal government. It related solely to the making of certain improvements within the Middletown Air Depot over which the United States had exclusive jurisdiction. Plaintiff's contract with the Defendant was for the carrying out within this Federal area of certain commitments made by the latter to the federal government. In the performance of its contract, including the part thereof delegated to the Plaintiff, the Defendant was 'present' or 'doing business' in a Federal area and not in Dauphin County. Incidental transactions between the Plaintiff and Defendant within the County of Dauphin and outside of the confines of the Middletown Air Depot . . . are not sufficient . . . either in quantity or quality to permit us to find that the Defendant was 'present' in this State within the requirements of the due process clause."

Neidig, as well as being in conflict with *Knott*, supra, is distinguishable from the case at bar. In *Neidig* there were no "minimal contracts" with the state, the *only* contract being the Defendant's isolated contract with the federal government to do work within the Depot. Here, the Defendants were residents of Pennsylvania at the time

of accident and, presumably both prior and subsequent thereto, made use of Pennsylvania highways and other facilities located therein. The Defendants' car was registered in Pennsylvania and the Defendant, Madge V. Shipe, was licensed by Pennsylvania to operate it. Certainly these elements constitute the "minimal contacts" with the Commonwealth of Pennsylvania to satisfy the requirements of due process. To hold otherwise would defeat the very purpose of Pennsylvania's Non-Resident Motorist Act, which is to afford redress to Pennsylvania's citizens in Pennsylvania rather than to force them to go to distant places to start their action. Were Plaintiff to fail here, his only recourse under Federal law, would be to bring suit against the Defendants in a Federal Court in Florida.

Bertrand v. Wilds, 281 S.W. 2d 390 (1955), is an interesting case involving Tennessee's Non-Resident Motorist Statute which provided for substituted service against non-residents who operated their motor vehicle on the highways within the state and where the accident happened in the state. The Tennessee Act, therefore, was not identical to Pennsylvania's since Pennsylvania's Act refers to operation *within* the Commonwealth (not on the highways of the Commonwealth). In any event, Defendants' car was involved in an accident with Plaintiff on a road within and upon territory occupied by the Veterans Hospital at Memphis, Tennessee, concededly territory over which the federal government had exclusive jurisdiction. The Supreme Court of Tennessee in reversing the Lower Court, held that substituted service upon the Defendants under the provision of the Non-Residents Motorist Act was valid. In doing so, the Court stated at page 396:

> "Is it true that he (Defendant) may operate his automobile for hours on a public highway and be

exempt from the provisions of this 'substitute for service statute' the moment he enters a private driveway, or an area that is under control or supervision of Federal authorities? We think not.".

No case anywhere involving the exact facts of the present case has been brought to our attention. However, in light of the consistent holding of all the cases, that Non-Resident Motorist Acts are enacted for the benefit of the local citizenry rather than for the benefit of the motorist, we are inclined to accept the Tennessee view. We hold, therefore, that in this case, the New Cumberland General Depot is within the Commonwealth of Pennsylvania for the purposes of service of process provided for in Pennsylvania's Non-Resident Motorist Act of the Motor Vehicle Code, that proper service upon the Defendants was made thereunder and that the Court has jurisdiction of the person of the Defendants in this action. In view of the foregoing, the following order is accordingly entered.

And now, to wit, this 30th day of April, 1963, the Defendants' Preliminary Objection to Plaintiff's Complaint is hereby dismissed and the Defendants are given leave to file an Answer thereto within twenty (20) days of the date of this order.

An Exception is granted to the Defendants.

By the Court,
(s) James E. Buckingham,
Judge.

APPENDIX B

IN THE SUPREME COURT OF PENNSYLVANIA
Middle District

No. – May Term, 1964

Thomas J. Brennan,

Appellee

v.

Madge E. Shipe and Burdwell H. Shipe,

Appellants

Appeal from the Order of the Court of Common Pleas of York County, Pennsylvania.

OPINION OF THE COURT

Cohen, J., Filed: April 21, 1964:

This is an appeal from the dismissal of appellants' preliminary objections challenging their subjection to substituted service of process under the Pennsylvania Nonresident Motorist Act[1] in an action arising out of an

[1] Act of May 14, 1929, P. L. 1721, §1 et seq., as amended, 75 P.S. §2001 et seq.

automobile accident which occurred on a federal military reservation located in Pennsylvania.

Appellee alleges in his complaint that he was injured when struck by a motor vehicle driven by appellant Madge Shipe, who at the time of the accident was acting as the agent or employee of her husband, appellant Burdwell Shipe. The accident occurred in the New Cumberland General Depot which is located in York County. The land comprising the depot and exclusive jurisdiction thereover were ceded to the United States Government in 1937 by the Commonwealth of Pennsylvania.

At the time of the accident, both appellants were residents of Pennsylvania. Before service of process was made, however, appellants moved to Florida. Being thus unable to serve appellants personally in Pennsylvania, appellee, pursuant to the Nonresident Motorist Act, served the Secretary of the Commonwealth as the statutory agent of appellants and sent a copy of the complaint to appellants in Florida by registered mail. In the court below appellants contended that the application of the substituted service provisions of our Nonresident Motorist Act under the facts of this case was unconstitutional. The lower court overruled this objection and this appeal ensued.

Appellants assert that by virtue of Article I, section 8 of the United States Constitution[2] the federal government

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[2] "[The Congress shall have power] [t]o exercise exclusive legislation in all cases whatsoever, over such District . . . as may . . . become the Seat of the Government of the United States and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dockyards and other needful Buildings."

possesses exclusive legislative jurisdiction over lands acquired from the states except as such jurisdiction is expressly reserved or delegated to the ceding state. They cite many authorities in support of this proposition. See e.g., Fort Leavenworth Railroad Co. v. Lowe, 114 U.S. 525 (1885). Appellants contend that no exception has been made with regard to the New Cumberland Depot and hence Pennsylvania law cannot be constitutionally applied to the operation of motor vehicles within the depot.

We do not quarrel with appellants' recitation of the general effect of a state's cession to the federal government of land and exclusive jurisdiction thereover. It is equally true, however, that the creation of "a state within a state" produces considerable difficulties because of the legal vacuum which may result from the sudden disappearance of state law in the acquired area. See Education of Children on Federal Lands, 21 Pa. D. & C. 2d 310 (1960) (Opinion of the Attorney General); Note, *Federal Areas: The Confusion of a Jurisdictional-Geographical Dichotomy*, 101 U. Pa. L. Rev. 124 (1952). Accordingly, provision is often made for the retention of state law in the federal enclave either by an express reservation in the act of transfer or through remedial congressional legislation. See e.g., James v. Dravo Contracting Co., 302 U.S. 134 (1937); Manlove v. McDermott, 308 Pa. 384, 162 Atl. 278 (1932). In asserting that Pennsylvania law does not apply to an accident occurring within the depot appellants have overlooked just such a provision. The Act of Congress of February 1, 1928, reads as follows:

> "*Action for death or personal injury within national park or other place under jurisdiction of United States; application of State laws*

"In the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the State within whose exterior boundaries such place may be; and in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which it may be." (16 USCA §457).

A reading of this statute clearly indicates that in the event of *death* of any person as a result of neglect or wrongful acts of another within a federal enclave, an action brought for the wrongful death shall exist as though the enclave were under the jurisdiction of the state in which it is located. Were this an action for wrongful death, this would conclude the matter before us. However, a literal reading of the statute indicates that where an action is brought to recover *for injuries sustained* in a federal enclave, Congress has directed that the laws of the state within which the enclave is located shall govern the rights of the parties. There is no apparent reason why actions for injuries must receive different treatment from those brought for wrongful death. We could therefore interpret the federal act to have contemplated no such distinction. It is not necessary for us to do so, however, for the Pennsylvania Nonresident Motorist Act is clearly a law of Pennsylvania which by its own terms governs "the rights of the parties" in an "action brought to recover on account of injuries sustained in" a

federal enclave located "within the exterior boundaries" of Pennsylvania.

The Pennsylvania Nonresident Motorist Act provides that a nonresident, or a resident who subsequently becomes a nonresident, appoints the Secretary of the Commonwealth as his agent to accept service of process for accidents or collisions "occurring within the Commonwealth." Does the phrase "within the Commonwealth" embrace land within the geographical boundaries of Pennsylvania which has been ceded to the federal government? We were confronted with a very similar question in Kiker v. Philadelphia, 346 Pa. 624, 31 A. 2d 289 (1943). In that case the City of Philadelphia sought to tax employees of the Philadelphia Navy Yard, a federal enclave, on the basis of an ordinance providing for a general tax on certain income earned "in Philadelphia". An Act of Congress permitted the taxation of income earned in federal enclaves. The plaintiff argued that the phrase "in Philadelphia" excluded the federal enclave because the latter was not within Philadelphia. We rejected this contention stating that the phrase was obviously intended to include all territory located within the geographical limits of Philadelphia. Similarly, the words "within the Commonwealth" in the Motorist Act were intended to encompass all territory within the geographical borders of Pennsylvania and this would include any federal enclave located therein. Thus, the court below correctly upheld the use of substituted service of process to obtain jurisdiction over appellants and the order appealed from is affirmed.[3]

Order affirmed.

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[3] In the Act ceding the land in question to the federal government, the Commonwealth reserved concurrent jurisdiction

"in so far that civil process in all cases . . . may be executed thereon in the same way and manner as if this jurisdiction had not been ceded." (Act of July 1, 1937, P. L. 2656, §2, 74 P.S. §86). Appellee contends that this reservation not only includes personal service within the federal area, but also authorizes substituted service for acts occurring within the enclave. Because of the disposition we make, we need not consider this argument.

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In The

Supreme Court of the United States

October Term, 1963
No. 353

BURDWELL H. SHIPE, and ARTHUR M. BELL, Administrator of the Estate of MADGE E. SHIPE, Deceased,

Appellants

vs.

THOMAS J. BRENNAN,

Appellee

MOTION OF APPELLEE TO DISMISS THE APPEAL OR IN THE ALTERNATIVE, TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA

On Appeal from the Supreme Court of Pennsylvania, No. 2 May Term, 1964.

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Case Caption

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1963
No.

BURDWELL H. SHIPE, and ARTHUR M. BELL, Administrator of the Estate of MADGE E. SHIPE, Deceased,

Appellants

vs.

THOMAS J. BRENNAN,

Appellee

On Appeal from the Supreme Court of Pennsylvania, No. 2 May Term, 1964.

MOTION OF APPELLEE TO DISMISS THE APPEAL, OR IN THE ALTERNATIVE, TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA

The appellee, by his attorneys, moves the Honorable Court to dismiss the appeal herein filed, or in the alternative, to affirm the judgment of the Supreme Court of Pennsylvania for the reason that the federal question presented is not substantial, and the decision of the Supreme Court of Pennsylvania interpreting the state statute involved is so clearly correct that plenary consideration is not warranted.

I.

THE PENNSYLVANIA STATUTE INVOLVED AND THE NATURE OF THE CASE

A.

The Pennsylvania Statute

The appeal raises the issue of the validity of the Pennsylvania Nonresident Motorist Act (Act of Pennsylvania Assembly, 1929, May 14, P. L. 1721, No. 563, Sections 1-5, as amended; 75 Purdon's (Pa.) Statutes, Sections 2001-2005, as amended). This act provides that a nonresident, or a resident who subsequently becomes a nonresident, who accepts the privileges of operating a vehicle (or licensure of the same), thereby appoints the Secretary of the Commonwealth as his agent to accept service of process for motor vehicle accidents or collisions occurring "within the Commonwealth." Thereafter, the act provides for the service of the process upon the Secretary of the Commonwealth and upon the defendant by registered mail, return receipt requested, further providing for continuance "as may be necessary to afford the defendant reasonable opportunity to appear and defend the action." The statute is identical to or

substantially the same as those enacted by all other states, and is set forth in full in appellant's "Jurisdictional Statement" (p. 6).

B.

The Proceedings Below

On May 26, 1961, the appellee, a resident of Pennsylvania, was seriously and permanently injured when struck by a motor vehicle operated by appellant, Madge E. Shipe (now deceased), on the confines of the New Cumberland General Depot, a federal reservation. The motor vehicle operated by Madge E. Shipe was jointly owned by her and her husband, Burdwell H. Shipe, also an appellant. *At the time of the accident, both of the appellants were residents of the Commonwealth of Pennsylvania, both were licensed to operate a motor vehicle by the Commonwealth of Pennsylvania, and the jointly owned vehicle involved was licensed to the appellants by the Commonwealth of Pennsylvania.*

The lands comprising the New Cumberland General Depot are located in York County, Pennsylvania, and were ceded to the federal government by the Commonwealth of Pennsylvania in 1937, wherein Pennsylvania reserved concurrent jurisdiction "in so far that civil process in all cases ... may be executed thereon in the same way and manner as if this juris-

diction had not been ceded." (Act of Assembly, July 1, 1937, P. L. 2656, Section 2, 74 Purdon's Statutes, Section 86.)

Subsequently, in September, 1962, appellee instituted suit against the appellants in the Court of Common Pleas of York County, and service of the Complaint or process was duly made upon the appellants in Florida, pursuant to the provisions of the Nonresident Motorist Act, the appellants having removed themselves from Pennsylvania to the State of Florida prior to commencement of the action, but seven months *after* the accident.

The appellants preliminarily objected raising the issue of their subjection to substituted service of process under that statute. On April 30, 1963, the Court of Common Pleas of York County dismissed the preliminary objections, from which order the appellants appealed to the Supreme Court of Pennsylvania. The Supreme Court of Pennsylvania by its order of April 21, 1964, affirmed the order of the lower court, from which appellants have filed their present appeal.

II.

ARGUMENT

A.

The Federal Question Is Not Substantial

Appellants contend that substituted service upon them under the Pennsylvania Nonresident Motorist Act for an accident occurring on a federal reservation, entirely within the territorial boundaries of Pennsylvania, constitutes a denial of due process. In so doing, appellants have treated themselves as "nonresidents" who were total strangers to Pennsylvania. Such is not the case. At the time of the accident the appellants were residents of and licensed by the Commonwealth of Pennsylvania, and in addition, the motor vehicle involved in the accident was likewise licensed under the laws of Pennsylvania.

The constitutionality of Nonresident Motorist Statutes and the power of a state to regulate the use of its highways has long been decided, beginning with *Hendrick v. Maryland*, 235 U.S. 610, and culminating in *Hess v. Pawloski*, 274 U.S. 352 (1927). These statutes were held not in violation of the Due Process Clause. As stated in *Hess v. Pawloski*, supra (page 356):

"In the public interest the state may make and enforce regulations reasonably calculated to promote care on the part of all, residents and nonresidents alike, who use its highways. The measure in question operates to require a nonresident [as well as a resident who subsequently removes from the state] to answer for his conduct in the state where arise causes of action alleged against him, as well as to provide for a claimant a convenient method by which he may sue to enforce his rights." (Brackets supplied.)

Here, the appellants were licensed, resident operators and owners under the laws of Pennsylvania at the time this cause of action arose. The due process requirements of subjecting a person to a binding judgment in a state where the person has not been personally served with process within the geographical boundaries of the state are clearly complied with in this instance. These requirements have been set out in the decision of this Court in *International Shoe Co. v. Washington*; 326 U.S. 310 (1945), and in *McGee v. International Life Insurance Co.*; 355 U.S. 220 (1957), where it was said (page 222):

"Since Pennoyer v. Neff, 95 U.S. 714, the Court has held that the Due Process Clause of the Fourteenth Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries. But just where this line of limitation falls has been the subject of prolific

controversy, particularly with respect to foreign corporations. In a continuing process of evolution the court accepted and then abandoned 'consent', 'doing business' and 'presence' as the standard for measuring the extent of state judicial power over such corporations . . . . More recently in International Shoe Co. v. Washington, 326 U.S. 310, the court decided that 'due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." ' "

"Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributed to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by a full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a state where he engages in economic activity.

". . . It is sufficient for purposes of due process that the suit was based on a contract which had substantial connections with that state. Cf. Hess v. Pawloski, 274 U.S. 312 . . ."

and at page 244:

"Of course, there may be inconvenience to the insurer if it is held amenable to suit in California where it had the contract, but certainly nothing which amounts to a denial of due process . . ."

"The statute was remedial, in the purest sense of that term, and neither enlarged nor impaired respondent's substantive rights or obligations under the contract. It did nothing more than to provide petitioner with a California forum to enforce whatever substantive rights she might have against respondent. At the same time respondent was given a reasonable time to appear and defend on the merits after being notified of the suit. Under such circumstances it had no vested right not to be sued in California."

It can scarcely be argued that the appellants did not have the "minimum contacts" with Pennsylvania, referred to in the *International Shoe Co.*, case, regardless of where the accident occurred, so long as within the geographical boundaries of the Commonwealth.

The fact that the accident occurred on a federal reservation is immaterial under these circumstances. This Court refused certiorari in *Knott v. Furman*, 163 F. 2d 199 (C.C.A. 4th, 1947), certiorari denied, 332

U.S. 809, rehearing denied, 332 U.S. 826, when the identical question was raised. In the Knott case, the defendant, a Delaware Corporation with its principal office in New York, entered into a contract with the federal government to operate a hotel situated at Old Point Comfort, Virginia, located entirely within the confines of the Fort Monroe Military Reservation on land ceded by the State of Virginia. The defendant corporation was not registered to do business in Virginia and performed no other activities in that state. In the statute ceding the land to the U.S., Virginia reserved the right to execute civil and criminal process over the ceded lands. The plaintiff, a guest at the hotel and a resident of Massachusetts, was injured during a fire at the hotel and instituted a personal injury action in the U. S. District Court of Virginia, *obtaining service over the defendant via substituted process upon the Secretary of the Commonwealth of Virginia as a corporation doing business* within the State of Virginia. The defendant attacked jurisdiction, contending, inter alia, that since the only business done was on a federal reservation, it was not doing business *within Virginia* within the meaning of the Act. This argument was rejected. The Court held (page 202-206):

> "We shall point out later, that for the purpose of venue, the doing of business on the Fort Monroe Military Reservation does not differ from doing business elsewhere in the Eastern District of Virginia; and we think it clear that

such doing of business amounts to consent to the service of process upon the Secretary of the Commonwealth of Virginia and consent to be sued in the federal courts of the district *as well as in the state courts with respect to a cause of action which has arisen there.*" (Emphasis supplied.)

Page 206:

"We come, then, to the question as to whether the application of the statute [substituted service by doing business within the state] is different because the business done was on the Fort Monroe Military Reservation. *We do not think so . . .*

If *this provision* [reservation of execution of process of the ceding statute] *means anything, it means that the laws of the State of Virginia with reference to the service of process run throughout the reservation. This means, of course, not only that state officers may go upon the reservation to serve process, but also that state laws as amended, from time to time will determine what acts on their part constitute service . . .*" (Brackets and emphasis supplied.)

Page 206:

"Since the state has retained the right to serve process on foreign corporations as well as on others within the reservation *and has the power to say what shall constitute such service it follows that any act which may be legally taken as an acceptance of service elsewhere within the*

> *state may be so taken within the reservation. This necessarily means that the doing of business by a foreign corporation within that reservation has the same effect, so far as submitting itself to the local jurisdiction for the service of process is concerned as doing business elsewhere within the state.*" (Emphasis supplied.)

The Court in *Howard v. Commissioners of the Sinking Fund of the City of Louisville*, 344 U.S. 624 (1953), rejected the appellants' theory that a federal reservation creates a legal vacuum and a state within a state, when it said (page 626):

> "The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government. The soverein rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim. It is friction, not fiction, to which we must give heed."

Under these circumstances, and in view of the previous decisions of this Court, the question presented by appellants is not sufficiently substantial to warrant plenary consideration by the Court on written briefs and oral argument. It is indeed the appellee whose rights have been prejudiced by the long delay, and not that of the appellants. The appeal should be dismissed.

B.

The Decision of the Supreme Court of Pennsylvania Is Clearly Correct

---

The Pennsylvania Supreme Court has pointed out that the Pennsylvania Nonresident Motorist Act is clearly within the purview of the Act of Congress of February 1, 1928, 8 USCA, Sec. 457, which, in an action to recover for injuries sustained in an accident occurring on a federal reservation, adopts the laws of the "State within the exterior boundaries of which it may be". Hence the substituted service of process provided under the Pennsylvania statute is valid in accordance with the above Federal Act, and not in violation of due process.

Further, the Pennsylvania Supreme Court held that the words "within the Commonwealth" in the Motorist Act were intended to encompass all territory within the geographical borders of Pennsylvania, and this would include "any federal enclave located therein." Under the circumstances, this cannot be said to "offend traditional notions of fair play and substantial justice." *McGee v. International Life Insurance Co.*, supra. For purposes of the Nonresident Motorist Act, the geographical boundaries of the New Cumberland General Depot were non-existent and, therefore, due process was not denied. *Hess v. Pawloski*, 274 U.S. 352 (1927).

III.

CONCLUSION

We respectfully submit that the appellants have not presented a substantial federal question, and that the Due Process questions raised by them have already been decided adversely to the appellants by this Court. Further, the judgment of the Supreme Court of Pennsylvania is essentially correct and the applicable law would require ultimate adoption of its decision, whether by the same line of reasoning or not. In fact, the only way a serious due process question would be presented would be as a result of a contrary judgment. That would create an almost insurmountable financial hurdle upon appellee, by *compelling* him to try his case in the State of Florida, many miles distant from the location of the scene of the accident, the residence of his medical and lay witnesses to the accident, and the residence of appellants at the time of the accident. Appellee had no recourse to an action in the appropriate Federal Court because of the absence of proper venue (28 USCA 1391): *Stokes v. Adair*, 265 F. 2d 662 (C.C.A., 4th, 1945), certiorari denied, 361 U.S. 816, interpreting 16 USCA 457, and *Branci v. Wheeling Steel Corp.*, 152 F. 2d 887 (C.C.A., 3rd, 1945), certiorari denied, 327 U.S. 801.

There has been no violation of the Due Process Clause of the Constitution of the United States, no

substantial federal question is present, and the appeal should be refused.

Respectfully submitted,
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IN THE

Supreme Court of the United States

October Term, 1964
No. 353

BURDWELL H. SHIPE and ARTHUR M. BELL, Administrator of the Estate of MADGE E. SHIPE, Deceased,

Appellants

vs.

THOMAS J. BRENNAN,

Appellee

On Appeal from the Supreme Court of Pennsylvania, No. 2 Mag Term, 1964.

BRIEF OF APPELLANTS IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS THE APPEAL OR IN THE ALTERNATIVE TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA

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Case Caption

IN THE
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BURDWELL H. SHIPE and ARTHUR M. BELL, Administrator of the Estate of MAUDE E. SHIPE, Deceased,
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BRIEF OF APPELLANTS IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS THE APPEAL OR IN THE ALTERNATIVE TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA

On Appeal from the Supreme Court of Pennsylvania, No. , May Term, 1964

I. ARGUMENT

A. The Minimum Contacts To Sustain Substituted Service of Process Are Lacking

Appellee, in argument on his Motion To Dismiss the Appeal or in the Alternative To Affirm the Judgment of the Supreme Court of Pennsylvania, has argued that because appellants were residents of the Commonwealth of Pennsylvania at the time of the accident in suit, were licensed to operate a motor vehicle by the Commonwealth of Pennsylvania and had licensed the vehicle involved in the accident in the Commonwealth of Pennsylvania, the Commonwealth had those "minimum contacts" with Appellants sufficient to sustain personal jurisdiction by substituted service. It is respectfully submitted that Appellee is incorrect in this position and that no decision of this court or of any other appellate tribunal has held otherwise.

Appellee cites *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), and *McGee v. International Life Insurance Co.*, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957), in support of his contention. In each of these cases it is clear that jurisdiction was found on the basis of acts or activities occurring within the state in which jurisdiction was initially asserted and that it was the occurrence of the act or activities which was the basis for this court's decision in each case. The quotation from *McGee v. International Life Insurance Co.*, supra, contained at the top of page 8 of Appellee's Motion points out this proposition succinctly:

"'. . . It is sufficient for purposes of due process that the suit was based on a contract which had substantial connections with that State . . .'"

The opinion of Mr. Chief Justice Stone in *International Shoe Co. v. State of Washington*, supra, points out the basis for the decision in that case just as clearly at page 319 U.S. Reports:

> "But to the extent that a corporation exercises the privilege of conducting activities within a State, it enjoys the benefits and protection of the laws of that State. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the State, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue."

The basis for these two decisions is consistent with the basis of other decisions of this Court sustaining jurisdiction over the person of an absent Defendant by substituted service of process. In the present case, it is true that Appellants were citizens and residents, and had complied with the licensing requirements, of the Commonwealth of Pennsylvania. The narrow question on appeal, however, is whether the accident in suit occurred within the Commonwealth of Pennsylvania. Some recent lower court decisions have indicated that citizenship of a defendant is significant in determining whether or not jurisdiction may be acquired by substituted service but in each of these cases the act or activity alleged as a basis of the suit has occurred within the forum state.

In *Owens v. Superior Court of Los Angeles County*, 52 Cal. 2d 822, 345 P. 2d 921, 78 A.L.R. 2d 388 (1959), it was held that the California courts might acquire personal jurisdiction over the defendant by extra territorial service where it appeared that the defendant was a resident and citizen of the state at the time the accident occurred but had removed from the state prior to the institution of suit. Significantly, however, the basis for the action was a tort which had occurred within California. There, the California Supreme Court interpreted *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958), cited in Appellants' Jurisdictional Statement at pages 30 and 31, as not departing from the minimum contact test but pointing out that defendant, in that suit, *had done no act in the state* which would justify assumption of jurisdiction over it.

Illinois has apparently enacted a statute providing for the acquisition of jurisdiction over nonresidents based on the "commission of a tortious act within this State" and has sustained the validity of that statute in *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E. 2d 673 (1957).

The most recently reported case in point would appear to be *DeFazio v. Wright*, 229 F. Supp. 111 (D.C. N.J. 1964), sustaining the use of extraterritorial service pursuant to a New Jersey rule of court where the defendants, although residents and citizens of New Jersey at the time the cause of action arose, had subsequently moved to Pennsylvania and the act complained of had occurred within New Jersey. The Court there relied on *Bluff Creek Oil Co. v. Green*, 257 F. 2d 83 (5 Cir. 1958); *Nelson v. Miller*, supra; *Fraser v. Columbia Transportation Co.*, 158 F. Supp. 858 (D.C. Ill. 1957); and *Owens v. Superior Court*

of Los Angeles County, supra, in sustaining its jurisdiction. In all of these cases it was an act or conduct occurring within the forum state which moved the courts involved to sustain their jurisdiction over the defendants.

Appellee's contention that there are, in the present case, sufficient contacts with the Commonwealth of Pennsylvania to sustain the trial court's jurisdiction over the persons of Appellants is dependent upon a finding that the act complained of occurred within Pennsylvania. Rather than being persuasive that this court should not review the question presented, the argument avoids the issue entirely.

B. The Fact That the Accident in Suit Occurred Upon Land Ceded to the United States Is Controlling

Appellee, by his Motion To Dismiss the Appeal or, in the Alternative, To Affirm the Judgment of the Supreme Court of Pennsylvania, asserts that an accident which occurs upon a military reservation over which exclusive jurisdiction has been ceded to the Federal Government occurs in the state within which the military reservation lies and, in support of that argument, appears to rely almost solely on *Knott v. Farming*, 163 F. 2d 199 (4th Cir., 1947); certiorari denied, 332 U.S. 809, 68 S. Ct. 111, 92 L. Ed. 387, rehearing denied, 332 U.S. 826, 68 S. Ct. 164, 92 L. Ed. 401. There a nonresident of Virginia brought suit against a corporation, also a nonresident of Virginia, in a United States District Court of Virginia and obtained service upon the Defendant by service upon the Secretary

of the Commonwealth of Virginia. Such service was pursuant to a Virginia statute applicable to corporations doing business within Virginia but which had not registered to do business nor appointed an agent for the service of process. The Circuit Court was there concerned with whether the Defendant Corporation had waived federal venue provisions by doing business within the Commonwealth of Virginia and, as an initial determination, held that doing business within a federal reservation over which jurisdiction had been ceded to the United States was, in fact, doing business within Virginia.

The *Knott* decision standing by itself may be authority for Appellee's contention. However, that decision does not stand alone.

Two years after the *Knott* decision, the Virginia Supreme Court made clear *its* position on the question of causes of action arising within federal reservations. *Hercules Powder Company v. Reuben*, 188 Va. 694, 51 S.E. 2d 149 (1949), involved a suit by an employee of the powder company for breach of it employment contract. The powder company, a Delaware Corporation with no office or chief officer in Pulaski County, Virginia operated an ordinance plant on the federal reservation at New River, an area over which the Commonwealth of Virginia had ceded to the United States exclusive jurisdiction but had retained concurrent jurisdiction for the service of civil and criminal process. In this case the powder company had expressly appointed the Secretary of the Commonwealth of Virginia as a statutory agent to accept service of process.

The lower Court rejected a plea in abatement questioning the jurisdiction of the Court but was reversed by

the Supreme Court of Virginia. Justice Gregory, speaking for the Court, said at 51 S.E. 2d 150:

> "We think that the plea in abatement was in proper form and that it should have been sustained by the trial court for the reason that the cause of action, if any, did not arise in Pulaski County but arose on a federal reservation over which the United States had exclusive jurisdiction.
>
> . . . . . .
>
> "The question of whether or not the Commonwealth of Virginia has any jurisdiction over territory of this kind has been settled by our decisions. See Foley v. Shriver, 81 Va. 568; Bank of Phoebus v. Byrum, 119 Va. 708, 67 S.E. 349, 27 L.R.A. N.S. 436, 135 Am. St. Rep. 953 and Buttery v. Robbins, 177 Va. 368, 14 S.E. 2d 344."

and, at page 151, said further:

> "The fact that the Commonwealth of Virginia retained in the deed concurrent jurisdiction with the United States to serve civil and criminal process in no way lessens the exclusive jurisdiction of the United States in the territory in question."

Quoting from *Western Union Telegraph Company v. Chiles*, 214 U.S. 274, 278, 29 S. Ct. 633, 53 L. Ed. 994 (1909), the Court continued:

> "It is apparent from the history of the establishment of the Norfolk Navy Yard, already given, that it is one of the places where the Congress possesses exclusive legislative power. It follows that the laws of the State of Virginia, with the exception referred

> to in the Acts of Assembly, cannot be allowed any operation or effect within the limits of the yard. The exclusive power of legislation necessarily includes the exclusive jurisdiction.'"

The Circuit Court for the 4th Circuit is not only in conflict with the Supreme Court of Virginia on this narrow issue, but is also in conflict with the Supreme Court of Maine and with the Federal District Court for the Northern District of Maine. In *Brooks Hardware Co. v. Greer*, 111 Me. 78, 87 A. 889, 46 L.R.A., N.S. 301 (1913), the Supreme Judicial Court of Maine held that a disabled veterans' home, established by Act of Congress on lands ceded to the United States upon which it operated a branch, did not have a place of business in the state. In *Berube v. White Plains Iron Works, Inc.*, 211 F. Supp. 457 (D.C. N.D. Me. 1962), it was held that the Defendant, a New York Corporation engaged as a subcontractor on Loring Air Force Base in Maine, was not doing business within the state of Maine so as to sustain service of process upon the Secretary of State in a suit based upon personal injuries claimed by the Plaintiff to have been sustained at the Air Force Base.

The Pennsylvania Supreme Court has held that the words "within the Commonwealth" in the Pennsylvania Nonresident Motorists Act, Act of May 14, 1929, P. L. 1721, as amended, 75 P.S. 2001 et seq., were intended to encompass all the territory within the geographical borders of Pennsylvania. Whether such was the intention of the Pennsylvania Legislature is not determinative. The Legislature saw fit, in 1937, to cede to the United States exclusive jurisdiction over the land now encompassed by the New Cumberland General Depot. The refusal of the

Pennsylvania Supreme Court, and of Appellee, to recognize the paramount right acquired by the United States and the consequences which logically flow from that paramount right requires review by this Court. Jurisdiction is inextricably entwined with power. When the Commonwealth ceded its power over the land in question, it also divested itself of its former right to assert its jurisdiction based upon events occurring within the ceded territory. Its attempt now to assert jurisdiction, if successful, will deprive Appellants of due process.

II. CONCLUSION

It is respectfully submitted that the question presented to your Honorable Court is so substantial as to require plenary consideration, with briefs on the merits and oral argument for its resolution, and that Appellee's Motion To Dismiss the Appeal or, in the Alternative, To Affirm the Judgment of the Supreme Court of Pennsylvania should be denied.

Respectfully submitted,

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